



COMMONWEALTH of VIRGINIA

Office of the Attorney General

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Attorney General

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May 15, 2013

Waldo Jaquith
[REDACTED]
[REDACTED]

Re: Freedom of Information Act

Dear Mr. Jaquith:

The Office of the Attorney General for the Commonwealth of Virginia (hereinafter, "Office") received an e-mail from you containing a request which was made pursuant to the Virginia Freedom of Information Act, Virginia Code § 2.2-3700 et seq. (as amended) (hereinafter, "FOIA"). The e-mail was dated and received on April 30, 2013. By letter dated May 7th, this Office sought an extension to respond to you pursuant to Virginia Code § 2.2-3704(B)(4). This is our response.¹

In your e-mail, you request the following:

As per § 2.2-3128, your office is required to offer orientation courses on ethics in public contracting. Under § 2.2-3129, records must be provided publicly, upon request, of a list of dates and attendees. I would be grateful if you would furnish me with a listing of that information for The Office of the Attorney General, including records for every employee, throughout Ken Cuccinelli's term.

Given the uniqueness of this Office's role, it is governed by a specific set of statutory provisions separate and apart from those that govern state agencies.² This Office is classified as a "state agency" pursuant to some statutes, but not according to all statutes. Please be advised that according to constitutional provisions and statutory definitions, this Office is not classified as a "state agency" for purposes of Virginia Code § 2.2-3128. The Virginia Constitution

¹ See *Christian v. State Corporation Commission*, 282 Va. 392 (2011). The Virginia Supreme Court held that FOIA was inapplicable to the SCC by reasoning, in part, that the SCC was not a "public body" as it was authorized under the Virginia Constitution. The holding in *Christian* could be similarly extended to include the Attorney General as his Office is authorized by the Virginia Constitution. See *Va. Const.* art. V, § 15. Hence, a good-faith argument could be posited that this Office is responsive to FOIA requests as a courtesy. Therefore, this Office does not waive any arguments it may have before a court by providing a response to a requester.

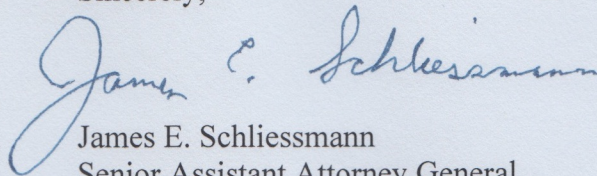
² See Virginia Code § 2.2-600 et seq. (as amended), which govern state agencies.

provides for the office of Attorney General, and prescribes the qualifications for that office.³ The Attorney General is an executive constitutional officer who is separate and apart from the executive constitutional office of the Governor.⁴ The Office of the Attorney General serves as the Department of Law to the Commonwealth.⁵ The Office conducts "the transaction of the legal business of the Commonwealth"⁶ and serves as the authorized legal counsel to the Commonwealth's various state agencies.⁷

Given the constitutional structure and the statutory definitions, the premise of your request is inapplicable to this Office. Therefore, consistent with previous administrations and in accordance with Virginia Code § 2.2-3704(B)(3), "the requested records could not be found or do not exist."

Thank you for your request. I hope the information provided is of assistance to you.

Sincerely,


James E. Schliessmann
Senior Assistant Attorney General

JES/ltn

³ See Va. Const. art. V, § 15.

⁴ See Va. Const. art. V, §§ 1 and 7.

⁵ See Virginia Code § 2.2-500 et seq. (as amended).

⁶ See Virginia Code § 2.2-503.

⁷ See Virginia Code § 2.2-507.